IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

SA.No. 803 of 1992(D)

(AGAINST THE JUDGMENT DATED 31/08/1991 IN AS.160/1990 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, MUVATTUPUZHA IN OS.289/1987 of MUNSIFF'S COURT,MUVATTUPUZHA)
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APPELLANT: (PLAINTIFF):

MATHAI, SON OF THARIYATH, AGED 56, CHENNOTHUMALIL, KOTTAPPADY KARA, KOTTAPPADY VILLAGE.

BY SRI.MATHAI(PARTY)

RESPONDENTS:(DEFENDANTS):
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1. **KERALA STATE ELECTRICITY BOARD, REPRESENTED BY THE SECRETARY, KERALA STATE ELECTRICITY BOARD, THIRUVANANTHAPURAM.**

2. **ASSISTANT EXECUTIVE ENGINEER, KERALA STATE ELECTRICITY BOARD, KURUPPAMPADY SECTION, PERUMBAVOOR.**

3. **A.V.YOYAKKI, SON OF VARGHESE, AVATHOTT VEETTIL, KOTTAPPADY KARA AND VILLAGE.**

4. **P.M.JACOB, SONOF MATHAI, PUTHUKUNNATHU KOTTAPPADY KARA, AND VILLAGE.**

5. **P.M.VARGHESE, SON OF MATHAI OF ...DO ...DO....**

BY ADV. SRI.P.SANTHALINGAM, SC, KSEB for R1 & R2
SRI.N.SUKUMARAN)
SRI.S.SHYAM) for R3 to R5

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

S.A .NO.803 OF 1992

Dated 24th July 2007

J U D G M E N T

Plaintiff in O.S.289 of 1987 on the file of Munsiff court, Muvattupuzha is the appellant. Respondents are defendants. Appellant instituted the suit seeking a decree for mandatory injunction directing respondents 1 and 2, Kerala State Electricity Board and Assistant Executive Engineer to remove electric line drawn over the plaint schedule property contending that plaint schedule property belong to him absolutely and electric line was drawn without seeking his consent or permission and appellant had filed O.P.8667 of 1986 before this court and this court directed first respondent to conduct an enquiry and to draw line only thereafter. It was alleged that in spite of that order electric line was drawn without conducting an enquiry and therefore respondents are liable to remove the line illegally drawn. Respondents resisted the suit contending that appellant was directed to produce original title deed

as well as certified copy of the sketch to establish his right and in spite of notice he did not produce the same and therefore allegation of the appellant that enquiry was not conducted is not correct. It was also pointed out that electric line was drawn not through the property of the appellant but above the varamba of thodu which is a puramboke land and therefore appellant is not entitled to decree sought for.

2. Learned Munsiff on the evidence of Pws.1 to 3, Exts.A1 to A7, B1 to B3, C1 and C1(a) dismissed the suit holding that appellant did not establish that electric line was drawn over his property and Exts.C1 and C1(a) establish that electric line was drawn over the puramboke land which lies on northern side of plaint schedule property. Appellant challenged decree and judgment before Sub court, Muvattupuzha in A.S.160 of 1990. Learned Sub Judge on re-appreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in second appeal.

3. Appeal was admitted and notice was issued to respondents. But substantial questions of law were not formulated. While the appeal was pending due to accidental fire, entire records were destroyed.

Appellant was directed to produce copies of appeal memorandum and judgments to enable the court to reconstruct the same. By that time counsel appearing for appellant died and therefore notice was issued to the appellant directly. Appellant thereafter appeared in person and did not engage a counsel and produced all necessary copies to enable the registry to reconstruct the same. Records were reconstructed.

4. Appellant in person and learned counsel appearing for respondents were heard.

5. Appellant contended that electric line was drawn through his property and Commissioner has not properly identified the property and the identification was not correct or in accordance with Ext.A7 survey plan and courts below did not consider this aspect and therefore decree and judgment are to be set aside. Learned counsel appearing for respondents pointed out that in spite of notice issued to appellant he did not produce title deed to enable first respondent Board to verify whether appellant has title to puramboke land through which electric line was drawn. Even before the trial court he did not produce the original title deed and instead produced Ext.A1 photocopy of the document

after manipulating the southern boundary to the effect that it is thodu instead of thodunada and Ext.B2 registration copy of the document produced by respondents establish the manipulation. Courts below on the evidence found that electric line is drawn through puramboke land and therefore appellant has no right over the property.

6. On hearing the appellant and learned counsel appearing for respondents and going through the judgments of courts below, I do not find any substantial question of law involved in the appeal. Though notice was issued, substantial questions of law were not formulated. Jurisdiction of this court under Section 100 can be invoked only on finding that there is substantial question of law. What was contended by the appellant is with regard to identity of the plaint schedule property. According to appellant identification made by Commissioner in Ext.C1(a) plan is not correct and if properly identified, plaint schedule property should take in the land where electric line was drawn. Trial court and first appellate court considered this aspect in detail. Appellant did not produce the original title deed and instead of produced only a

photocopy which was found to be unreliable due to manipulation played on it. Relying on Ext.B2 courts below found that appellant has not approached the court with clean hands. Report submitted by the Commissioner relied on by the courts below establish that electric line was drawn over purambok land and not through the property belonging to appellant. In such circumstances, appellant is not entitled to the decree sought for and there is no merit in the appeal.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

JUDGMENT

S.A.NO.803 OF 1992

24th JULY 2007

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